PUBLIC PROSECUTOR

v.

RAJID HJ. JAMIL

HIGH COURT, BRUNEI
DENYS ROBERTS CJ
[CRIMINAL TRIAL NO. 1 OF 1989]
9 JANUARY 1989

CRIMINAL PROCEDURE: *Sentencing - Defendant pleaded guilty to charges of attempted rape and outraging modesty of same woman - Factors to consider in imposing sentence.*

The defendant pleaded guilty to two charges, the first of attempted rape and the second of outraging the modesty of the same woman.

On the night in question, the defendant and his friend, Shahril, attended a wedding. At about 4 a.m., the defendant and Shahril offered to take the complainant to her home. The car was driven by the defendant who took it to a dirt lane, where the attacks, which are set out in the two charges, took place against the complainant.

Held:

[1] The defendant had not been represented and, in consequence, has not put forward some of the arguments which his Counsel might have advanced. Nevertheless, all these factors have been taken into account when deciding on the proper sentence to be imposed. The most important of these is that the defendant will only be 21 years of age some days later. As against that however, he has a previous conviction for theft.

[2] The defendant is also given credit for surrendering himself and the fact that he had pleaded guilty at all stages and has not sought to defend himself against the charges brought.

[3] On the first charge, the defendant was sentenced to 6 years' imprisonment. On the second charge, the defendant was sentenced to 2 years' imprisonment to run concurrently with the sentence imposed on the first charge. In addition, on the second charge, a sentence of whipping of 4 strokes was imposed on the defendant.

Legislation referred to:
Penal Code [Brunei], ss. 354, 376(2), 427, 428, 511

For the state - James Chiew, DPP
For the defendant - in person

JUDGMENT

Denys Roberts CJ:

The defendant has pleaded guilty to the two charges which have been brought against him, as a result of events which took place on the early morning of 4 December 1988.

The first charge was one of attempted rape, punishable under s. 376(2) of the Penal Code read with s. 511 of the Code.

The second charge was of outraging the modesty of the same woman, contrary to s. 354 of the Penal Code, on the same occasion.

On the night in question, the defendant, Rajid and his friend, Shahril, attended a wedding. At about 4 a.m., Rajid and Shahril offered to take the complainant, Miss X, to her home. The car was driven by Rajid, who took it to a dirt lane, where the attacks, which are set out in the two charges, took place against Miss X.

It is not necessary for me, as it was not in the case against Shahril, to describe in detail what occurred in the lane. It is sufficient to say that I am fully satisfied, on the facts which were presented, and which were agreed to as correct by Rajid himself, that the two charges, to which the accused pleaded guilty, were fully supported in both cases by the evidence.

In particular, I find that Miss X was in fear of hurt to herself at the time when Rajid threatened her in order to facilitate the offence of rape against her.

Nor am I left in any doubt that it was only the courage and ingenuity of Miss X that prevented the two defendants from taking advantage of her as they wished to do.

The accused, Rajid, has not been represented and, in consequence, has not put forward to me some of the arguments which I think his Counsel might have advanced. Nevertheless, I take all these factors into account when deciding on the proper sentence which I should impose.

The most important of these is that Rajid will only be 21 later this month. As against that, however, he has a previous conviction for theft. For this, he underwent a sentence of 6 months' imprisonment, in default of payment of a fine, from March 1987 onwards. Rajid was not employed at the time when he ran away, as he did, to Labuan immediately after the offences.

Contrary to what I was told by Shahril, Rajid insists that, although he had known the other man for sometime, he had not influenced him and was not the instigator of what happened to the girl. It does appear, however, that he surrendered himself on his return from Labuan, having seen his own picture on television. I give him credit both for that and for the fact that he has pleaded guilty at all stages and has not sought to defend himself against the charges brought.

In the case of Shahril, I have already considered the effect of those amendments to the Penal Code and to the Interpretation and General Clauses Ordinance, which were introduced in September 1988.

In the circumstances of this case, to which Rajid has agreed, the minimum sentence for attempted rape is one of 8 years and the maximum is one of 15 years.

As I commented, in the case of Shahril, this is not an incident which should attract the minimum sentence. Due allowance having been made for all the factors which were argued in favour of the defendant, I do not think that it would be proper to impose a different sentence on this defendant from that passed on Shahril.

On the first charge, therefore, I sentence the defendant to six years' imprisonment.

On the second charge, of outraging the modesty of a woman, I impose a sentence on Rajid of two years' imprisonment, to run concurrently with the six years imposed on the first charge.

I am, in addition, on the second charge, obliged to impose a sentence of whipping. I take into account that the minimum number of strokes, specified for offences in the Emergency Penal Code Amendment Order 1988, was two strokes, which applies to offences against ss. 427 and 428 of the Penal Code. I regard this as less than adequate for this offence and am sure that the correct sentence is the same as that which I imposed on Shahril, namely one of 4 strokes. This, of course, will be in addition to the sentences of imprisonment, which will run concurrently.

Also found at [1989] 2 CLJ 282